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SENATE

REPORT
100-324

AMENDING CHAPTER 13 OF TITLE 18, UNITED STATES CODE

APRIL 27 (legislative day, APRIL 23), 1988.—Ordered to be printed

Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 794, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 794) to amend the United States Criminal Code, having considered the same, a quorum being present, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

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I. PURPOSE

The purpose of S. 794 is to make it a Federal crime to interfere forcibly with the free exercise of religion. Specifically, S. 794 permits the prosecution of and imposition of Federal criminal penalties on persons who damage or destroy religious property, or who forcibly interfere with an individual's exercise of religious beliefs.

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II. Legislative History

S. 794 was introduced on March 19, 1987, referred to the Committee on the Judiciary on March 20, 1987, and then referred to the Subcommittee on the Constitution. An amendment in the nature of a substitute was polled out of the Constitution Subcommittee on February 12, 1988, and placed on the agenda of the full committee. (This substitute is similar to a 99th Congress bill introduced by Senator Metzenbaum, S. 2867.) The S. 794 substitute was ordered reported by the full committee to the Senate on March 24, 1988.

The subcommittee, chaired by Senator Simon, did not hold a hearing on S. 794 due to the consensus among subcommittee members that there were no issues requiring exploration at a hearing. The House passed similar legislation without controversy during the 99th Congress (H.R. 3180) and the 100th Congress (H.R. 3258). Members of the subcommittee were provided the information developed by the House Judiciary Committee during its consideration of H.R. 3258, the House companion to S. 794. (See House Report 100–337, 100th Congress, 1st Session.)

The subcommittee agreed to poll a substitute, which embodied the House-passed language of H.R. 3258 and changes requested by the Department of Justice. These changes include the addition of a scienter requirement to the definition of the offenses and a requirement that the Attorney General certify that a prosecution by the United States is in the public interest. In order to expedite consideration of the bill, the subcommittee struck the language in the original bill that provided a civil remedy for the offenses and polled only the criminal offense provisions. In so doing, the subcommittee did not intend to express a negative opinion on the desirability of, or the need for, a civil remedy.

III. Committee Action

S. 794 was introduced on March 19, 1987, by Senators Metzenbaum,[1] Lautenberg, Inouye, Specter, Wirth, Weicker, Sanford, and Mikulski. On March 24, 1988, the committee, with a quorum present, by voice vote, voted to favorably report to the Senate an amendment in the nature of a substitute which had been previously reported favorably to the full committee by the Subcommittee on the Constitution.

IV. Discussion

The purpose of S. 794 is to make violence motivated by hostility to religion a Federal offense. Under current law, there are limited circumstances under which a Federal prosecution for religiously motivated violence may be commenced: when those who engage in such violence are acting under color of state law;[2] when arson is involved and the individual flees across state lines to avoid prosecu-

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[1] As of March 24, the date the committee reported S. 794, there were 15 cosponsors: Senators Metzenbaum, Burdick, Daschle, Gore, Inouye, Lautenberg, Levin, Melcher, Mikulski, Weicker, Wirth, Roth, Sanford, Simon, and Specter.

[2] 18 U.S.C. 241, 242.

tion;[3] and when the religious property is located on an enclave within the exclusive jurisdiction of the United States.[4]

The need for a broader Federal criminal statute is evidenced by the growing number of incidents of religiously motivated violence. The incidence of violence motivated by hostility to religious groups and to those who support religious freedom [5] has led to a number of studies examining the problem.[6] The Anti-Defamation League of B'nai B'rith recently reported that anti-Semitic incidents increased 12 percent in 1987 and that the results of its survey were "disturbing." In 1987, the league reported 694 incidents and noted a striking increase—121 percent—in the number of incidents in California. The league study showed that the states with the highest number of anti-Semitic incidents were New York (207), California (137), Florida (64) and New Jersey (43).[7] Concern about the rise in anti-Semitic violence led the National Council of Churches to warn that such violence had reached "epidemic proportions." [8]

Black churches have also been targeted,[9] Catholics,[10] Buddhists,[11] and Unitarians have been terrorized.[12] There has also been an increase in anti-Islamic violence. Representative John Conyers, Jr. held a hearing on hate crimes in July 1986 and heard evidence from Representative Dymally that anti-Islamic violence has been growing not only in California but also in other states as well.[13]

The activities of intolerant new neo-Nazi groups, such as the so-called "skinheads",[14] and of older groups such as the Klu Klux Klan,[15] the Silent Brotherhood or Order,[16] in addition to actions by individuals, have justifiably created renewed concern about religious tolerance. The theme of this intimidation and violence is religious intolerance and bigotry, and both state and Federal governments must act to eliminate the threat. S. 794 is an appropriate response to this violence, which threatens one of our most precious rights, the right to free exercise of religion.

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[3] 18 U.S.C. 1074.

[4] Under the Assimilative Crimes Act, Federal authorities may prosecute in Federal courts using a state definition of an offense. *See* 18 U.S.C. Section 13.

[5] Father William Wassmuth's rectory in Coeur d'Alene, Idaho, was bombed in September 1986 because he was outspoken against the anti-black, anti-Semitic Aryan Nation. Center for Democratic Renewal, They Don't Wear Sheets: A Chronology of Racist and Far Right Violence—1980–1986 at 13 (1988) [hereinafter Racist and Far Right Violence]. Death threats were made against a North Carolina Presbyterian minister who spoke out against the Klu Klux Klan. Id. at 68.

[6] *See* generally, Racist and Far Right Violence supra n. 5.; Washington Lawyers Committee for Civil Rights Under Law and the National Institute for Prejudice and Violence, Striking Back at Bigotry (1986); Washington Lawyers Committee for Civil Rights Under Law, Civil and Criminal Remedies for Racially and Religiously Motivated Violence (1983); United States Commission on Civil Rights, Intimidated and Violence: Racial Bigotry in America (1983).

[7] Anti-Defamation League of B'nai B'rith, 1987 Audit of Anti-Semitic Incidents 2 (1988) [hereinafter cited as Anti-Semitic Incidents]; *New York Times*, January 27, 1988, Sec. A page 13, Col. 1–6.

[8] Leo, "Chilling Wave of Racism," *Time*, Jan. 25, 1988, at 57.

[9] Goldberg, "Fight Possible on Desecration Bill," *Richmond Times Dispatch*, June 24, 1985, at 1.

[10] Racist and Far Right Violence at 55, 77, supra n. 5.

[11] Id. at 80.

[12] Id. at 66.

[13] 133 Congressional Record E4989–90, Dec. 22, 1987, statement of Representative Dymally.

[14] Leo, "Chilling Wave of Racism" Time, Jan. 25, 1988 at 57; Anti-Semitic Incidents at 1, supra n. 7.

[15] Racist and Far Right Violence at 2, 29, 74, 87, supra n. 5.

[16] Id. at 28; Anti-Defamation League of B'nai B'rith, The Hate Movement Today: A Chronicle of Violence and Disarray 9 (1987).

V. TEXT OF S. 794, AS REPORTED

SECTION 1. CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY AND FOR OBSTRUCTION OF PERSONS IN THE FREE EXERCISE OF RELIGIOUS BELIEFS.

Chapter 13 of title 18, United States Code, is amended by adding at the end the following new section:

§ 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section—

(1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or

(2) intentionally obstructs, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so;

shall be punished as provided in subsection (c) of this section.

(b) The circumstances referred to in subsection (a) are that—

(1) in committing the offense, the defendant travels in interstate or foreign commerce, or uses a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce; and

(2) in the case of an offense under subsection (a)(1), the loss resulting from the defacement, damage, or destruction is more than $10,000.

(c) The punishment for a violation of subsection (a) of this section shall be—

(1) if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both;

(2) if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than ten years, or both; and

(3) in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both.

(d) No prosecution of any offense described in this section shall be undertaken by the United States except upon the notification in writing of the Attorney General or his designee that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(e) As used in this section—

(1) the term "religious real property" means any church, synagogue, mosque, religious cemetery, or other religious real property; and

(2) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

SEC. 2. TECHNICAL AMENDMENT.

The table of sections for chapter 13 of title 18, United States Code, is amended by adding at the end the following new item:

247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs.

VI. Section-by-Section Analysis

SECTION 1

S. 794 amends Chapter 13 of Title 18, United States Code, by adding a new section, Section 247(a)(1), entitled "Damage to religious property; obstruction of persons in the free exercise of religious beliefs." The new section makes it an offense under certain circumstances set forth in a subsequent subsection to intentionally attempt or to actually deface, damage, or destroy religious real property because of the religious character of that property. Conviction under this section, requires the prosecutor to show that a defendant intentionally attempted or committed the act of destruction and was motivated to do so by the religious character of the property.

New Section 247(a)(2) makes it an offense to use force or the threat of force to obstruct (or attempt to obstruct) any person's free exercise of religious beliefs. Conviction under this section, requires the prosecutor to show that the defendant intentionally attempted or did obstruct another from engaging in activities pursuant to that individual's religious beliefs and that he or she knew that the person was engaging in the activities pursuant to religious beliefs.

A conviction for defacing religious property or obstructing the free exercise of religious belief may only be obtained if the circumstances of the crime demonstrate interstate (as opposed to purely local) activity. Thus, new Section 247(b)(1) authorizes a prosecution if the defendant, in committing the offense, travels in or uses a facility or instrumentality of interstate or foreign commerce. It is not sufficient that a facility or instrumentality of interstate commerce be used; that facility or instrumentality must, in addition, be used in interstate commerce. In addition, new Section 247(b)(2) imposed the additional requirement for a prosecution under Section 247(a)(1) that the loss caused by the defacement damage or destruction be more than $10,000.

During consideration of S. 794 by the full committee, the question was raised whether the First Amendment may protect violence or other criminal activity that is alleged to be a form of religious practice or conduct. The Supreme Court has made clear that the protection of the first amendment does not extend to such conduct. S. 794 does not suggest or require a contrary result. *See* e.g. *NAACP* v. *Claiborne Hardware Co.,* 458 U.S. 886, 916 (1982) ("The First Amendment does not protect violence.")

Concerns have also been raised about whether S. 794 could prohibit law enforcement officials from using force to interfere with violent or other criminal activity that allegedly is a form of religious practice. Authorized actions by law enforcement officials constitute a well-recognized exception to criminal statutes; a lawful arrest, for example, does not violate Federal or state laws prohibiting kidnapping. The sponsors of S. 794 intend these same principles to apply in the case of law enforcement officials who are authorized to use force against persons who are or may engage in violence or other criminal conduct.

Section 247(c) sets forth penalties for violating Section 247. If death results from a violation, Section 247(c)(1) authorizes a fine under Title 18, imprisonment for any term of years or for life, or both. If serious bodily injury results, Section 247(c)(2) authorizes a fine under Title 18, imprisonment for not more than 10 years or both; Section 247(d)(2), discussed below, defines serious bodily injury. In any other case, Section 247(c)(3) authorizes a fine under Title 18, imprisonment for not more than one year or both. The penalties authorized by new Section 247 are identical to those authorized by 18 U.S.C. 241, entitled "Conspiracy Against Rights of Citizens."

Section 247(d) precludes any prosecution under Section 247 "except upon the certification in writing of the Attorney General or his designee that . . . a prosecution by the United States is in the public interest and necessary to secure substantial justice." This certification requirement was added at the request of the Justice Department to ". . . ensure appropriate deference to state or local prosecution in most cases, while allowing Federal prosecution where state or local officials will not assume jurisdiction or for any reason are unable to secure a conviction." [17]

Section 247(e) defines the term "religious real property" to mean any church, synagogue, mosque, religious cemetary or other religious real property. The specific examples of religious real property listed are mentioned as illustrations of religious real property covered by S. 794. The term "religious real property" is intended to encompass the property of all religions, not merely those explicitly mentioned.

Section 247(e)(2) defines serious bodily injury as an injury that creates a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of a bodily member, organ, or mental faculty.

VII. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 29, 1988.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 794, a bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for obstruction of persons in the free exercise of religious beliefs, as ordered reported by the Senate Committee on the Judiciary, March 24, 1988. We estimate that enactment of the bill would result in no significant cost to the federal government and in no cost to state or local governments.

The majority of crimes covered by S. 794 are committed by juveniles and are prosecuted at the state level. Based on information provided by the Department of Justice, CBO expects that there

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[17] Letter from John Bolton, Assistant Attorney General, to Joseph R. Biden, Jr., U.S. Senator, Nov. 3, 1987.

would be relatively few prosecutions under this statute and thus no significant cost to the federal government.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM, *Acting Director.*

VIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 1(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the Act will not have any direct regulatory impact.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 794, as reported, are shown as follows with new matter printed in italic. Existing law in which no change is proposed is shown in roman:

SECTION 247 OF TITLE 18, UNITED STATES CODE

PART I—CRIMES

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CHAPTER 13—CIVIL RIGHTS

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SEC. 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs.

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§ 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section—

(1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or

(2) intentionally obstructs, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so:

shall be punished as provided in subsection (c) of this section.

(b) The circumstances referred to in subsection (a) are that—

(1) in committing the offense, the defendant travels in interstate or foreign commerce, or uses a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce; and

(2) in the case of an offense under subsection (a)(1), the loss resulting from the defacement, damage, or destruction is more than $10,000.

(c) The punishment for a violation of subsection (a) of this section shall be—

(1) if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both;

(2) if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than ten years, or both; and

(3) in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both.

(d) No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or his designee that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(c) As used in this section—

(1) the term "religious real property" means any church, synagogue, mosque, religious cemetery, or other religious real property; and

(2) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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